

AMENDED IN SENATE MARCH 22, 2004

SENATE BILL

No. 1279

Introduced by Senator Bowen

February 13, 2004

An act *to amend Sections 1785.11.4, 1785.11.6, and 1785.15 of, to add Sections 1785.11.25 and 1785.15.5 to, to add Title 1.81.21 (commencing with Section 1798.91) to Part 4 of Division 3 of, and to repeal and amend Sections 1798.29 and 1798.82 of, the Civil Code, relating to identity theft.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1279, as amended, Bowen. Identity theft.

(1) Existing state and federal *law* regulates the activities of consumer credit reporting agencies. Existing state law permits a consumer to put a security alert and a security freeze on the consumer's credit report, which act to notify a recipient of the credit report that the consumer's identity may *have* been fraudulently used and to prohibit the release of the consumer's credit report without authorization, respectively. *Existing law requires a consumer credit reporting agency to provide a specified written summary of a consumer's rights with certain written disclosures provided to the consumer. Existing law exempts certain consumer credit reporting agencies from specified requirements regarding security alerts and security freezes.*

This bill would require a consumer credit reporting agency to allow a consumer to add a password to the consumer's credit file, and would require that a prospective user of a consumer credit report match that password prior to releasing the consumer's credit report to the user. The bill would, *among other things*, require that a consumer credit reporting agency provide a consumer a means of creating a password on the

telephone and over the Internet, and as part of that process, the bill would require a consumer credit reporting agency to authenticate the identity of a consumer by requiring the consumer to provide specified information correctly. *The bill would require that the password be effective within 5 business days, and that the consumer credit reporting agency send a confirmation of the password.*

The bill would require a consumer reporting agency to permit a consumer to change a password, as specified, and would prohibit a consumer reporting agency from charging for any of these services. The bill would except specified entities from the application of its provisions. The bill would revise the written summary of a consumer's rights that a consumer credit reporting agency is required to provide, and would exempt certain consumer credit reporting agencies from specified requirements regarding passwords. The bill would also require that a consumer reporting agency provide a toll-free telephone number staffed by people capable of answering and appropriately responding to calls regarding a consumer's rights in connection with credit reports, ~~24 hours a day, each day of the year, as specified.~~

(2) Existing law requires any agency, or a person or business conducting business in California, which owns or licenses computerized data that includes personal information, as defined, to disclose in specified ways, any breach of the security of the data, as defined, to any California resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

This bill would expand the application of those provisions to all data, rather than only computerized data. The bill would require that an agency or a person or business that has suffered a breach of the security of the system to provide 2 years of a credit monitoring service, as defined, without charge to each person whose personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The bill would repeal duplicative provisions of law.

~~(3) Existing law protects the privacy of personal information by imposing various restrictions on the use of that information in a variety of commercial contexts. Existing law permits a business to swipe a driver's license or identification card only for specific purposes and prohibits a business from retaining information for purposes other than those specified.~~

~~This bill would prohibit a person or entity from storing specified personal information regarding a customer on a card key, which it would define as a card or other device that the person or entity uses to provide a customer access to a lodging or a facility or to goods or services associated with that lodging or facility.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.11.25 is added to the Civil Code,
2 immediately following Section 1785.11.2, to read:
3 1785.11.25. (a) A consumer credit reporting agency shall
4 allow a consumer to add a password to the consumer's credit file.
5 The consumer credit reporting agency shall require that a
6 prospective user of a consumer credit report match that password
7 prior to releasing the consumer's credit report to the user. ~~A~~
8 ~~consumer shall provide a prospective user of the consumer's credit~~
9 ~~report with the consumer's password as part of providing consent~~
10 ~~for the user to check the consumer's credit.~~
11 (b) (1) A consumer credit reporting agency shall provide a
12 consumer a means of creating a password on the telephone and
13 over the Internet.
14 (2) A consumer credit reporting agency shall authenticate the
15 identity of a consumer who is creating a password by requiring the
16 consumer creating the password to provide the following
17 information correctly:
18 (A) The social security number, date of birth, name, and
19 address of the consumer to whom the password will apply.
20 (B) The correct answer to at least two questions, based on
21 information in the credit report of the consumer to whom the
22 password will apply, that the consumer would be likely to know,
23 but an identity thief would be unlikely to know.
24 (3) A consumer credit reporting agency shall require that the
25 password be at least eight characters long and contain at least one
26 letter and one number.
27 (4) *A consumer credit reporting agency shall add a password*
28 *to a consumer's credit report no later than five business days after*
29 *receiving a request from the consumer.*

1 (5) A consumer credit reporting agency shall send a written or
2 electronic confirmation of the password to the consumer.

3 (6) A password shall remain in effect until the consumer
4 requests that the password be removed.

5 (c) A consumer shall be permitted to change his or her
6 password by providing the existing password and following the
7 process described in subdivision (b).

8 (d) A consumer credit reporting agency may not charge a fee
9 for providing any of the services required by this section,
10 including, but not limited to, creating or changing a password.

11 (e) A consumer shall provide a prospective user of the
12 consumer's credit report with the consumer's password as part of
13 a providing consent for the user to check the consumer's credit. If
14 a prospective user of a consumer's credit report requests access to
15 a consumer credit report for which a password is required and the
16 consumer has not provided the proper password, the prospective
17 user of the consumer credit report may treat the application as
18 incomplete.

19 (f) This section does not prevent a consumer credit reporting
20 agency from advising a prospective user of a consumer credit
21 report that a password is in effect with respect to that report.

22 (g) The provisions of this section do not apply to the use of a
23 consumer credit report by any of the following:

24 (1) A person or entity, or a subsidiary, affiliate, or agent of that
25 person or entity, or an assignee of a financial obligation owing by
26 the consumer to that person or entity, or a prospective assignee of
27 a financial obligation owing by the consumer to that person or
28 entity in conjunction with the proposed purchase of the financial
29 obligation, with which the consumer has or had prior to
30 assignment an account or contract, including a demand deposit
31 account, or to whom the consumer issued a negotiable instrument,
32 for the purposes of reviewing the account or collecting the
33 financial obligation owing for the account, contract, or negotiable
34 instrument. For purposes of this paragraph, "reviewing the
35 account" includes activities related to account maintenance,
36 monitoring, credit line increases, and account upgrades and
37 enhancements.

38 (2) A subsidiary, affiliate, agent, assignee, or prospective
39 assignee of a person to whom access has been granted under

1 *subdivision (a) of Section 1785.11.25 for purposes of facilitating*
2 *the extension of credit or other permissible use.*

3 (3) *Any state or local agency, law enforcement agency, trial*
4 *court, or private collection agency acting pursuant to a court*
5 *order, warrant, or subpoena.*

6 (4) *A child support agency acting pursuant to Chapter 2*
7 *(commencing with Section 17400) of Division 17 of the Family*
8 *Code or Title IV-D of the Social Security Act (42 U.S.C. et seq.).*

9 (5) *The State Department of Health Services or its agents or*
10 *assigns acting to investigate Medi-Cal fraud.*

11 (6) *The Franchise Tax Board or its agents or assigns acting to*
12 *investigate or collect delinquent taxes or unpaid court orders or to*
13 *fulfill any of its other statutory responsibilities.*

14 (7) *The use of credit information for the purposes of*
15 *prescreening as provided for by the federal Fair Credit Reporting*
16 *Act.*

17 (8) *Any person or entity administering a credit file monitoring*
18 *subscription service to which the consumer has subscribed.*

19 (9) *Any person or entity for the purpose of providing a*
20 *consumer with a copy of his or her credit report upon the*
21 *consumer's request.*

22 SEC. 2. *Section 1785.11.4 of the Civil Code is amended to*
23 *read:*

24 1785.11.4. The provisions of Sections 1785.11.1, 1785.11.2,
25 1785.11.25, and 1785.11.3 do not apply to a consumer credit
26 reporting agency that acts only as a reseller of credit information
27 pursuant to Section 1785.22 by assembling and merging
28 information contained in the data base of another consumer credit
29 reporting agency or multiple consumer credit reporting agencies,
30 and does not maintain a permanent data base of credit information
31 from which new consumer credit reports are produced. However,
32 a consumer credit reporting agency acting pursuant to Section
33 1785.22 shall honor any security freeze placed on, *or any*
34 *password added to*, a consumer credit report by another consumer
35 credit reporting agency *pursuant to Section 1785.11.2 or Section*
36 *1785.11.25.*

37 SEC. 3. *Section 1785.11.6 of the Civil Code is amended to*
38 *read:*

39 1785.11.6. The following entities are not required to place in
40 a credit report—~~either~~ a security alert, pursuant to Section

1 1785.11.1, ~~or~~ a security freeze, pursuant to Section 1785.11.2 *or*
2 *a password, pursuant to Section 1785.11.25:*

3 (a) A check services or fraud prevention services company,
4 which issues reports on incidents of fraud or authorizations for the
5 purpose of approving or processing negotiable instruments,
6 electronic funds transfers, or similar methods of payments.

7 (b) A deposit account information service company, which
8 issues reports regarding account closures due to fraud, substantial
9 overdrafts, ATM abuse, or similar negative information regarding
10 a consumer, to inquiring banks or other financial institutions for
11 use only in reviewing a consumer request for a deposit account at
12 the inquiring bank or financial institution.

13 *SEC. 4. Section 1785.15 of the Civil Code is amended to read:*

14 1785.15. (a) A consumer credit reporting agency shall
15 supply files and information required under Section 1785.10
16 during normal business hours and on reasonable notice. In addition
17 to the disclosure provided by this chapter and any disclosures
18 received by the consumer, the consumer has the right to request
19 and receive all of the following:

20 (1) Either a decoded written version of the file or a written copy
21 of the file, including all information in the file at the time of the
22 request, with an explanation of any code used.

23 (2) A credit score for the consumer, the key factors, and the
24 related information, as defined in and required by Section
25 1785.15.1.

26 (3) A record of all inquiries, by recipient, which result in the
27 provision of information concerning the consumer in connection
28 with a credit transaction that is not initiated by the consumer and
29 which were received by the consumer credit reporting agency in
30 the 12-month period immediately preceding the request for
31 disclosure under this section.

32 (4) The recipients, including end users specified in Section
33 1785.22, of any consumer credit report on the consumer which the
34 consumer credit reporting agency has furnished:

35 (A) For employment purposes within the two-year period
36 preceding the request.

37 (B) For any other purpose within the 12-month period
38 preceding the request.

39 Identification for purposes of this paragraph shall include the
40 name of the recipient or, if applicable, the fictitious business name

1 under which the recipient does business disclosed in full. If
2 requested by the consumer, the identification shall also include the
3 address of the recipient.

4 (b) Files maintained on a consumer shall be disclosed promptly
5 as follows:

6 (1) In person, at the location where the consumer credit
7 reporting agency maintains the trained personnel required by
8 subdivision (d), if he or she appears in person and furnishes proper
9 identification.

10 (2) By mail, if the consumer makes a written request with
11 proper identification for a copy of the file or a decoded written
12 version of that file to be sent to the consumer at a specified address.
13 A disclosure pursuant to this paragraph shall be deposited in the
14 United States mail, postage prepaid, within five business days after
15 the consumer's written request for the disclosure is received by the
16 consumer credit reporting agency. Consumer credit reporting
17 agencies complying with requests for mailings under this section
18 shall not be liable for disclosures to third parties caused by
19 mishandling of mail after the mailings leave the consumer credit
20 reporting agencies.

21 (3) A summary of all information contained in files on a
22 consumer and required to be provided by Section 1785.10 shall be
23 provided by telephone, if the consumer has made a written request,
24 with proper identification for telephone disclosure.

25 (4) Information in a consumer's file required to be provided in
26 writing under this section may also be disclosed in another form
27 if authorized by the consumer and if available from the consumer
28 credit reporting agency. For this purpose a consumer may request
29 disclosure in person pursuant to Section 1785.10, by telephone
30 upon disclosure of proper identification by the consumer, by
31 electronic means if available from the consumer credit reporting
32 agency, or by any other reasonable means that is available from the
33 consumer credit reporting agency.

34 (c) "Proper identification," as used in subdivision (b) means
35 that information generally deemed sufficient to identify a person.
36 Only if the consumer is unable to reasonably identify himself or
37 herself with the information described above, may a consumer
38 credit reporting agency require additional information concerning
39 the consumer's employment and personal or family history in
40 order to verify his or her identity.

1 (d) The consumer credit reporting agency shall provide trained
2 personnel to explain to the consumer any information furnished
3 him or her pursuant to Section 1785.10.

4 (e) The consumer shall be permitted to be accompanied by one
5 other person of his or her choosing, who shall furnish reasonable
6 identification. A consumer credit reporting agency may require
7 the consumer to furnish a written statement granting permission to
8 the consumer credit reporting agency to discuss the consumer's
9 file in that person's presence.

10 (f) Any written disclosure by a consumer credit reporting
11 agency to any consumer pursuant to this section shall include a
12 written summary of all rights the consumer has under this title and
13 in the case of a consumer credit reporting agency which compiles
14 and maintains consumer credit reports on a nationwide basis, a
15 toll-free telephone number which the consumer can use to
16 communicate with the consumer credit reporting agency. The
17 written summary of rights required under this subdivision is
18 sufficient if in substantially the following form:

19 "You have a right to obtain a copy of your credit file from a
20 consumer credit reporting agency. You may be charged a
21 reasonable fee not exceeding eight dollars (\$8). There is no fee,
22 however, if you have been turned down for credit, employment,
23 insurance, or a rental dwelling because of information in your
24 credit report within the preceding 60 days. The consumer credit
25 reporting agency must provide someone to help you interpret the
26 information in your credit file.

27 You have a right to dispute inaccurate information by contacting
28 the consumer credit reporting agency directly. However, neither
29 you nor any credit repair company or credit service organization
30 has the right to have accurate, current, and verifiable information
31 removed from your credit report. Under the Federal Fair Credit
32 Reporting Act, the consumer credit reporting agency must remove
33 accurate, negative information from your report only if it is over
34 seven years old. Bankruptcy information can be reported for 10
35 years.

36 If you have notified a consumer credit reporting agency in
37 writing that you dispute the accuracy of information in your file,
38 the consumer credit reporting agency must then, within 30
39 business days, reinvestigate and modify or remove inaccurate
40 information. The consumer credit reporting agency may not



1 charge a fee for this service. Any pertinent information and copies
2 of all documents you have concerning an error should be given to
3 the consumer credit reporting agency.

4 If reinvestigation does not resolve the dispute to your
5 satisfaction, you may send a brief statement to the consumer credit
6 reporting agency to keep in your file, explaining why you think the
7 record is inaccurate. The consumer credit reporting agency must
8 include your statement about disputed information in a report it
9 issues about you.

10 You have a right to receive a record of all inquiries relating to
11 a credit transaction initiated in 12 months preceding your request.
12 This record shall include the recipients of any consumer credit
13 report.

14 You may request in writing that the information contained in
15 your file not be provided to a third party for marketing purposes.

16 *You have a right to place a password on your credit report,*
17 *which will prohibit a consumer credit reporting agency from*
18 *releasing any information in your credit report unless the*
19 *password is provided. The password is designed to prevent credit,*
20 *loans, and services from being approved in your name without*
21 *your consent. However, you should be aware that you must provide*
22 *the correct password with applications for products and services*
23 *where a credit check is required or it may delay, interfere with, or*
24 *prohibit the timely approval of any request or application you*
25 *make regarding a new loan, credit, mortgage, insurance,*
26 *government services or payments, rental housing, employment,*
27 *investment, license, cellular phone, utilities, digital signature,*
28 *Internet credit card transaction, or other services, including an*
29 *extension of credit at point of sale. The password will not restrict*
30 *access to your credit report by a person or entity, or its affiliates,*
31 *or collection agencies acting on behalf of the person or entity, with*
32 *which you have an existing account, when that person or entity*
33 *requests information in your credit report for the purposes of*
34 *reviewing or collecting the account. Reviewing the account*
35 *includes activities related to account maintenance, monitoring,*
36 *credit line increases, and account upgrades and enhancements.*

37 You have a right to place a “security alert” in your credit report,
38 which will warn anyone who receives information in your credit
39 report that your identity may have been used without your consent.
40 Recipients of your credit report are required to take reasonable

1 steps, including contacting you at the telephone number you may
2 provide with your security alert, to verify your identity prior to
3 lending money, extending credit, or completing the purchase,
4 lease, or rental of goods or services. The security alert may prevent
5 credit, loans, and services from being approved in your name
6 without your consent. However, you should be aware that taking
7 advantage of this right may delay or interfere with the timely
8 approval of any subsequent request or application you make
9 regarding a new loan, credit, mortgage, insurance, rental housing,
10 employment, investment, license, cellular phone, utilities, digital
11 signature, Internet credit card transaction, or other services,
12 including an extension of credit at point of sale. If you place a
13 security alert on your credit report, you have a right to obtain a free
14 copy of your credit report at the time the 90-day security alert
15 period expires. A security alert may be requested by calling the
16 following toll-free telephone number: (Insert applicable toll-free
17 telephone number).

18 You have a right to place a “security freeze” on your credit
19 report, which will prohibit a consumer credit reporting agency
20 from releasing any information in your credit report without your
21 express authorization. A security freeze must be requested in
22 writing by certified mail. The security freeze is designed to prevent
23 credit, loans, and services from being approved in your name
24 without your consent. However, you should be aware that using a
25 security freeze to take control over who gets access to the personal
26 and financial information in your credit report may delay, interfere
27 with, or prohibit the timely approval of any subsequent request or
28 application you make regarding a new loan, credit, mortgage,
29 insurance, government services or payments, rental housing,
30 employment, investment, license, cellular phone, utilities, digital
31 signature, Internet credit card transaction, or other services,
32 including an extension of credit at point of sale. When you place
33 a security freeze on your credit report, you will be provided a
34 personal identification number or password to use if you choose
35 to remove the freeze on your credit report or authorize the release
36 of your credit report for a specific party or period of time after the
37 freeze is in place. To provide that authorization you must contact
38 the consumer credit reporting agency and provide all of the
39 following:

40 (1) The personal identification number or password.



(2) Proper identification to verify your identity.

(3) The proper information regarding the third party who is to receive the credit report or the period of time for which the report shall be available.

A consumer credit reporting agency must authorize the release of your credit report no later than three business days after receiving the above information.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have a right to bring civil action against anyone, including a consumer credit reporting agency, who improperly obtains access to a file, knowingly or willfully misuses file data, or fails to correct inaccurate file data.

If you are a victim of identity theft and provide to a consumer credit reporting agency a copy of a valid police report or a valid investigative report made by a Department of Motor Vehicles investigator with peace officer status describing your circumstances, the following shall apply:

(1) You have a right to have any information you list on the report as allegedly fraudulent promptly blocked so that the information cannot be reported. The information will be unblocked only if (A) the information you provide is a material misrepresentation of the facts, (B) you agree that the information is blocked in error, or (C) you knowingly obtained possession of goods, services, or moneys as result of the blocked transactions. If blocked information is unblocked you will be promptly notified.

(2) Beginning July 1, 2003, you have a right to receive, free of charge and upon request, one copy of your credit report each month for up to 12 consecutive months.”

SEC. 5. Section 1785.15.5 is added to the Civil Code, to read:

1785.15.5. A consumer credit reporting agency shall provide consumers a toll-free telephone number that shall be staffed by people capable of answering and appropriately responding to calls related to a consumer’s rights under this title, ~~24 hours a day, each day of the year. This telephone service shall be sufficiently staffed~~

1 ~~to provide that the average waiting period to speak with a live,~~
2 ~~customer service operator is not more than two minutes.~~

3 ~~SEC. 3.—~~

4 *SEC. 6.* Section 1798.29 of the Civil Code, as added by
5 Chapter 915 of the Statutes of 2002, is repealed.

6 ~~SEC. 4.—~~

7 *SEC. 7.* Section 1798.29 of the Civil Code, as added by
8 Chapter 1054 of the Statutes of 2002, is amended to read:

9 1798.29. (a) Any agency that owns or licenses data that
10 includes personal information shall disclose any breach of the
11 security of the system following discovery or notification of the
12 breach in the security of the data to any resident of California
13 whose unencrypted personal information was, or is reasonably
14 believed to have been, acquired by an unauthorized person. The
15 disclosure shall be made in the most expedient time possible and
16 without unreasonable delay, consistent with the legitimate needs
17 of law enforcement, as provided in subdivision (c), or any
18 measures necessary to determine the scope of the breach and
19 restore the reasonable integrity of the data system.

20 (b) Any agency that maintains data that includes personal
21 information that the agency does not own shall notify the owner
22 or licensee of the information of any breach of the security of the
23 data immediately following discovery, if the personal information
24 was, or is reasonably believed to have been, acquired by an
25 unauthorized person.

26 (c) The notification required by this section may be delayed if
27 a law enforcement agency determines that the notification will
28 impede a criminal investigation. The notification required by this
29 section shall be made after the law enforcement agency determines
30 that it will not compromise the investigation.

31 (d) For purposes of this section, “breach of the security of the
32 system” means unauthorized acquisition of data that compromises
33 the security, confidentiality, or integrity of personal information
34 maintained by the agency. Good faith acquisition of personal
35 information by an employee or agent of the agency for the
36 purposes of the agency is not a breach of the security of the system,
37 provided that the personal information is not used or subject to
38 further unauthorized disclosure.

39 (e) For purposes of this section, “personal information” means
40 an individual’s first name or first initial and last name in

1 combination with any one or more of the following data elements,
2 when either the name or the data elements are not encrypted:

3 (1) Social security number.

4 (2) Driver's license number or California identification card
5 number.

6 (3) Account number, credit or debit card number, in
7 combination with any required security code, access code, or
8 password that would permit access to an individual's financial
9 account.

10 (f) For purposes of this section, "personal information" does
11 not include publicly available information that is lawfully made
12 available to the general public from federal, state, or local
13 government records.

14 (g) For purposes of this section, "notice" may be provided by
15 one of the following methods:

16 (1) Written notice.

17 (2) Electronic notice, if the notice provided is consistent with
18 the provisions regarding electronic records and signatures set forth
19 in Section 7001 of Title 15 of the United States Code.

20 (3) Substitute notice, if the agency demonstrates that the cost
21 of providing notice would exceed two hundred fifty thousand
22 dollars (\$250,000), or that the affected class of subject persons to
23 be notified exceeds 500,000, or the agency does not have sufficient
24 contact information. Substitute notice shall consist of all of the
25 following:

26 (A) E-mail notice when the agency has an e-mail address for
27 the subject persons.

28 (B) Conspicuous posting of the notice on the agency's Web site
29 page, if the agency maintains one.

30 (C) Notification to major statewide media.

31 (h) Notwithstanding subdivision (g), an agency that maintains
32 its own notification procedures as part of an information security
33 policy for the treatment of personal information and is otherwise
34 consistent with the timing requirements of this part shall be
35 deemed to be in compliance with the notification requirements of
36 this section if it notifies subject persons in accordance with its
37 policies in the event of a breach of security of the system.

38 (i) An agency that has suffered a breach of the security of the
39 system shall provide two years of a credit monitoring service
40 without charge to each person whose personal information was, or

1 is reasonably believed to have been, acquired by an unauthorized
2 person. For the purposes of this section, “credit monitoring
3 service” means a service that allows a consumer electronic access
4 to the information in his or her credit report on demand and
5 provides regular e-mail notifications of changes to the consumer’s
6 credit report.

7 ~~SEC. 5.—~~

8 *SEC. 8.* Section 1798.82 of the Civil Code, as added by
9 Chapter 915 of the Statutes of 2002, is repealed.

10 ~~SEC. 6.—~~

11 *SEC. 9.* Section 1798.82 of the Civil Code, as added by
12 Chapter 1054 of the Statutes of 2002, is amended to read:

13 1798.82. (a) Any person or business that conducts business
14 in California, and that owns or licenses data that includes personal
15 information, shall disclose any breach of the security of the system
16 following discovery or notification of the breach in the security of
17 the data to any resident of California whose unencrypted personal
18 information was, or is reasonably believed to have been, acquired
19 by an unauthorized person. The disclosure shall be made in the
20 most expedient time possible and without unreasonable delay,
21 consistent with the legitimate needs of law enforcement, as
22 provided in subdivision (c), or any measures necessary to
23 determine the scope of the breach and restore the reasonable
24 integrity of the data system.

25 (b) Any person or business that maintains data that includes
26 personal information that the person or business does not own shall
27 notify the owner or licensee of the information of any breach of the
28 security of the data immediately following discovery, if the
29 personal information was, or is reasonably believed to have been,
30 acquired by an unauthorized person.

31 (c) The notification required by this section may be delayed if
32 a law enforcement agency determines that the notification will
33 impede a criminal investigation. The notification required by this
34 section shall be made after the law enforcement agency determines
35 that it will not compromise the investigation.

36 (d) For purposes of this section, “breach of the security of the
37 system” means unauthorized acquisition of data that compromises
38 the security, confidentiality, or integrity of personal information
39 maintained by the person or business. Good faith acquisition of
40 personal information by an employee or agent of the person or



business for the purposes of the person or business is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, “personal information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver’s license number or California identification card number.

(3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account.

(f) For purposes of this section, “personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(g) For purposes of this section, “notice” may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars (\$250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the person or business has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the Web site page of the person or business, if the person or business maintains one.

(C) Notification to major statewide media.

(h) Notwithstanding subdivision (g), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part,

1 shall be deemed to be in compliance with the notification
2 requirements of this section if the person or business notifies
3 subject persons in accordance with its policies in the event of a
4 breach of security of the system.

5 (i) A person or business that has suffered a breach of the
6 security of the system shall provide two years of a credit
7 monitoring service without charge to each person whose personal
8 information was, or is reasonably believed to have been, acquired
9 by an unauthorized person. For the purposes of this section,
10 “credit monitoring service” means a service that allows a
11 consumer electronic access to the information in his or her credit
12 report on demand and provides regular e-mail notifications of
13 changes to the consumer’s credit report.

14 ~~SEC. 7. Title 1.81.21 (commencing with Section 1798.91) is~~
15 ~~added to Part 4 of Division 3 of the Civil Code, to read:~~

16
17 ~~TITLE 1.81.21. CARD KEYS~~
18

19 ~~1798.91. (a) For the purposes of this section, “card key”~~
20 ~~means a card or other device that a person or entity uses to provide~~
21 ~~a customer access to a lodging or a facility or to goods or services~~
22 ~~associated with that lodging or facility.~~

23 ~~(b) A person or entity may not store the following personal~~
24 ~~information of a customer on a card key:~~

25 ~~(1) Name.~~

26 ~~(2) Address.~~

27 ~~(3) Telephone number.~~

28 ~~(4) Birth date.~~

29 ~~(5) Social security number.~~

30 ~~(6) Driver’s license number.~~

31 ~~(7) Credit card number.~~

32 ~~(8) Bank account number.~~